lord or some expectation held out by him to the tenant on the strength of which the tenant expended money on the land. (See *Wee Kang Whye & Anor.* v. *Lee Woon Tong*,[2] per Choor Singh J., which I accept with respect). That is the general principle. In *Ooi Ai Seng's* case, *supra*, Azmi L.P. (as he then was) dealt with two aspects of the application of this principle. The first is whether there was clear evidence upon which the court would hold that the landlord had agreed to let the tenant remain on the land for so long as the tenant would feel disposed to remain on it. In *Siew Soon Wah & Ors.* v. *Yong Tong Hong*[3] the tenancy agreement stated that the tenancy shall be permanent. The Privy Council held that —

"the intention clearly was that the landlord should let the premises to the respondent for as long as the period as it was within his power to do so, that he should not be able to eject the respondent so long as he paid the stipulated rent and that the respondent should be entitled to occupy the property so long as he wished and so long as he paid the rent."

In *In re King's Lease-hold Estates*[4] there was a verbal agreement between the landlord and tenant that the former should let the tenant remain in the premises for such term of years not exceeding the landlord's terms as the tenant might desire to be the tenant. It was held by the Privy Council that the tenant has a right to remain as such and retain possession as long as the landlord's interest exists.

Secondly, where there is no such clear evidence the facts and circumstances and in particular the subject-matter of the dispute must be looked into. In *Ooi Ai Seng's* case, *supra*, the very nature of the construction which was a wooden shed built of corrugated iron roof, wooden posts and wire mesh walls suggest that the duration of such tenancy is of a temporary nature. The Federal Court held that an equity or equitable estoppel does not arise in favour of the tenant. This principle was followed by Choor Singh J. in *Wee Kang Whye's* case, *supra*, which also involved a temporary structure. It was held that the plaintiffs had granted the defendant a temporary gratuitous licence which they were entitled to revoke at will and the plaintiffs were therefore entitled to an order of possession against the defendant.

In the present case although the house in question cannot be said to be of a temporary nature, I am of the opinion that there is clear evidence arising from clause 3 of the agreement that the tenant can remain on the land only for so long as the landlord would feel disposed to allow him to remain there. Thereafter he has to remove the said house at his own cost and without compensation *at any time* the landlord requires the said land for his own use by giving the tenant three months' notice in writing. This clause is further strengthened by clause 4 of the agreement which states, *inter alia*, that in case of subletting, etc., of the said house by the tenant with the permission and consent of the landlord, the new occupier is subject to the same terms set out in clause 3. In other words, it is envisaged and understood by both parties at the time of the execution of the said agreement that the respondents/plaintiffs may serve three months' notice on the appellant/defendant in cases where the respondents/plaintiffs require the land for their own use. In this particular instance, it has been adduced in evidence that the respondents/plaintiffs, four of whom are government servants, wanted the land back in order to erect houses of their own after obtaining loans from the government for the purpose. Obviously they require the land back for their own use and considering that the appellant/defendant has been occupying the land for the last fifteen years their request is reasonable. Thus, even though the appellant/defendant has spent some money in repairing the house, in the circumstances of the case it is clear no expectation was created or encouraged by the landlord that raises an equity in his favour such as to enable him to remain there for so long as he likes.

I have no alternative but to dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Ooi Gin Sun & Co.; Jayadeva & Zahir.*

MOHAMAD BIN SENIK v. NIK MEK BINTI HAJI NIK DER & ORS.

[F.C. (Suffian L.P., Ali and Wan Suleiman F.JJ.) December 13, 1974]

[Kota Bharu — Federal Court Civil Appeal No. 90 of 1971]

Land Law — Kelantan — Land Settlement — Power of District Officer to make order relating to possession of land — Registration of person in possession — Possessory title — Kelantan Land Settlement Ordinance, 1955, ss. 5, 7, 8 and 10.

The Kelantan Land Settlement Ordinance gives power to the District Officer to inquire and decide who is in possession of land and to make an order to that effect. Thereupon the Registrar will enter the person in possession on the register and give him a copy of the registration known as a document of possessory title. In this case the appellant had applied for orders to declare certain orders made by the District Officer to be null and void and for an order for the lands to be registered in his name as administrator of the estate of the deceased proprietor. The High Court dismissed the application and the appellant appealed to the Federal Court.

Held, allowing the appeal: the orders were made without jurisdiction, as the District Officer had made no finding that the persons in whose favour the orders were made were in actual possession of the lands at the time of the enquiry.

Case referred to:-

(1) *Mamat* v. *Mahmood* [1961] M.L.J. 167.

The following cases were also cited in argument: *Mat'Ail* [1961] M.L.J. 15; *Fatimah binti Wok* [1964] M.L.J. 318, 319; *Anismic* [1969] 1 All E.R. 208, 233.

FEDERAL COURT.

A. Wilson for the appellant.

First respondent absent.

Second & third respondents in person.

Suffian L.P. (delivering the judgment of the Court): The plaintiff, Mohamed bin Senik, was born in 1938 in Kampong Weng, Thailand. His father was Senik bin Sulong (whom we shall call the deceased) and his mother, Halimah. His mother died when he was 45 days old. His father at that time had another wife, Bidah, and after his mother's death Bidah looked after him. About ten years before his death the deceased divorced Bidah and married Nik Mek, the first defendant. The deceased died on 18th February, 1950,

leaving 19 pieces of land, the subject matter of the suit out of which arises this appeal. He left the following next-of-kin:

(1) a son, the plaintiff;
(2) a widow, the first defendant;
(3) mother Mek Nik; and
(4) a sister, Mek Long.

The mother died in 1954 and Dosan, the second defendant, became administrator of her estate.

The sister died in 1956 and her husband, Che Teh bin Che Wook (the third defendant) became administrator of her estate.

On 14th April, 1957, the first defendant (Senik's widow) applied for administration *de bonis non* of Senik's estate. The plaintiff did not know about this, as he was staying with his other stepmother Bidah. The first defendant did not in her application for administration include the plaintiff as one of the beneficiaries as she considered that he was only an adopted son. The plaintiff first knew of the first defendant's application only in 1960 when the District Officer held inquiries relating to the deceased's lands under the Kelantan Land Settlement Ordinance No. 51 of 1955.

On 20th December, 1960, the plaintiff sued in the Kathi Besar's court for a declaration that he was a lawful son of the deceased. He failed before the Kathi Besar, but on appeal to the Ruler in Council he won and on 13th February, 1963, was declared to be the deceased's lawful son. (During the trial of the instant suit the first defendant accepted this finding.)

In September 1964 the plaintiff filed a summons in chambers for an order that he be included as a beneficiary of the deceased's estate and on 24th March, 1966, he got the order, but the first defendant who had been approved letters of administration refused to comply with it and did not even extract letters of administration. The plaintiff successfully applied for letters of administration to be granted to him instead of to his step-mother, the first defendant. On 17th February, 1968, the plaintiff extracted letters of administration of the deceased's estate.

In the meantime in 1959 and 1960 enquiries had been held by the District Officer under the Kelantan Land Settlement Ordinance regarding the deceased's lands, and various orders called Group Settlement Orders (G.S.Os.) had been made ordering the registration of the lands in the names of various people.

Subsequently some of the lands were transferred to others.

The plaintiff as administrator of his father's estate on 8th May, 1968, sued his stepmother (first defendant), Dosan (second defendant) as the representative of the deceased's mother's estate and Che Teh bin Che Wook (third defendant) as representative of the deceased's sister's estate —

(1) for an order declaring that all the orders made by the District Officer were null and void as having been made without jurisdiction;

(2) for an order that all the lands still registered in the name of persons who are not *bona fide* purchasers for value be registered in the name of the plaintiff as administrator of the deceased's estate; and

(3) for damages in respect of lands that have been sold to *bona fide* purchasers for value.

The plaintiff won judgment for some of his claims and lost others.

He appeals to this court only in respect of that part of the judgment which rejected his claim.

At this stage it is convenient to state the scheme of the Kelantan Land Settlement Ordinance. In Kelantan when a man sold his land the buyer often did not bother to have the transaction registered, and it very often happens that A remains as registered proprietor, but everybody in the village knows that he has sold the land concerned to B and then B to C and so on and that today the real owner is Z who is in possession but whose name does not appear on the register. This state of affairs might lead to confusion and future disputes, and so the Ordinance was passed to enable the District Officer to rectify the land register so that the real owner's name will appear on it. The Ordinance operates only in Kelantan and then only in areas declared under section 3 to be Settlement Areas. The District Officer goes down to the ground where the land is and holds a public enquiry to ascertain who is in possession of the land, who is its registered proprietor, who is entitled to be registered as proprietor, whether any person has a registrable interest in it and the extent of the land over which the interest may be exercised. The District Officer does not decide on title nor on the right to possession, but only on the fact of possession. If he is satisfied that the person in possession is or holds under the proprietor, he makes a finding to that effect and makes an order directing the registration of the interest so found. If he is satisfied that the land is registered in the name of a person and that another is in possession of it otherwise than holding under the proprietor, the District Officer makes a finding to that effect and makes an order which is presented to the Registrar, who thereupon enters the person in possession on the register and gives him a copy of the registration known as a document of possessory title. The person whose name is put on the register as a result of the District Officer's enquiry gets only what is known as possessory title, but it becomes indefeasible after three years.

The relevant provisions of the Ordinance summarised above are to be found in sections 5, 7, 8 and 10 which read as follows:

"5. (1) The District Officer shall at a public enquiry ascertain who is in possession of land, who is the registered proprietor, who is entitled to be registered as proprietor, whether any person has a registrable interest therein, and the extent of the land over which any interest is exercisable.

(2) The claimant may appear in person or by an agent authorised in writing or appointed before the District Officer, and shall produce to the District Officer any instruments affecting the land or interest which he claims.

(3) ....

(4) ....

7. Whenever the District Officer is satisfied that the person in possession of any land at the date of the enquiry is or holds under the proprietor thereof or is or holds under a person in occupation of State land under approved application in expectation of registration of title in accordance with the

law in force immediately before the commencement of the code, the District Officer shall make a finding to that effect and, in the manner prescribed, make an order, which shall be presented to the Registrar, directing the registration of the interest so found:

Provided that, where the interest so found is the interest of a person who is or holds under a person in occupation of State land under approved application as aforesaid, the Registrar shall on the presentation of the order register the title for which the application was approved and an interest corresponding to the interest of any person found to be holding under the applicant.

8. (1) Whenever the District Officer is satisfied that land in a Settlement Area is registered in the name of a person and that another is in possession thereof otherwise than holding under the proprietor the District Officer shall make a finding to that effect and, in the manner prescribed, make an order, which shall be presented to the Registrar.

(2) Whenever the District Officer is satisfied that the person in possession entered into possession as tenant, chargee or otherwise than as owner, by leave or licence of or on behalf of any person not being the proprietor who claims to be entitled to such land or any interest therein he shall make a finding to that effect and, in the manner prescribed, make an order, which shall be presented to the Registrar.

(3) Upon receipt of such order the Registrar shall furnish the person in possession or, where appropriate the person under whom or by whose licence the person in possession entered into possession, with the appropriate document of possessory title.

10. (1) Where a possessory title has been registered —

(a) no suit, action or proceeding under the Code or otherwise may be brought by any person to establish any claim to ownership of or interest in the land if such claim existed prior to the date of the registration of possessory title unless such suit, action or proceeding is commenced before the expiration of three years from the date of such registration;

(b) if in any such suit, action or proceeding as is referred to in paragraph (a) of this sub-section any judgment or order is given for the recovery of the land in favour of the proprietor or person entitled to be registered as the proprietor of the land the subject matter of the suit, action or proceeding, the interest therein of the holder of the possessory title and of his successors and all interests created thereunder shall cease from the date of registration of the judgment or order:

Provided that he shall be deemed to have been entitled to the revenues of such land until the date of such registration unless the Court or Officer making the order shall otherwise direct;

(c) if in any such action or proceeding a judgment or order is given or made in favour of the person claiming any other registrable interest in land such interest shall be registered against the possessory title in accordance with such judgment or order;

(d) subject to section 12 of this Ordinance, a minor or person under disability may, within three years of his ceasing to be a minor or to be under a disability or within 25 years of the registration of the document of possessory title, whichever shall be the shorter, bring an action or proceeding under the Code to establish his interest in such land:

Provided that if the action is brought after the expiration of three years from the date of registration of the document of possessory title a *bona fide* purchaser for value of land from the holder of a possessory title who has no notice, express or implied, of the claim of any minor or person under disability to any interest in such land shall take such land free of the interest of any minor or such person therein;

(e) subject to the right of the proprietor or person entitled to be registered as proprietor or entitled to any other registrable interest in land to obtain a judgment or order in accordance with the provisions of the previous paragraph the holder of the possessory title or his successors shall be deemed to be the owner of the land and upon the expiration of the said period shall have an indefeasible title to the land within the meaning of section 340 of the Code;

(f) any minor or person under disability who has suffered loss by operation of the proviso to paragraph (d) of this sub-section shall be entitled to recover from the vendor the value of the purchase price or other consideration received by the vendor from the purchaser if action is brought within the period prescribed in paragraph (d) of this sub-section."

First Ground of Appeal

The plaintiff's first ground of appeal relates to the following GSOs:

(1) No. 29/59 in respect of lot 793;

(2) No. 36/59 in respect of lot 591;

(3) No. 35/59 in respect of new lots 2146 and 2147 (part of old lot 353) and lot 416;

(4) No. 23/59 in respect of lot 732; and

(5) No. 31/59 in respect of lot 590.

Taking the first GSO impugned, namely GSO 29/59 in respect of lot 793, a copy of the notes of the enquiry are at page 71 of the appeal record and reads —

"NOTES OF ENQUIRY COPIED FROM LAND SCHEME NOTE BOOK NO. 8/59 PAGE 276 ON LAND LOT NO. 793, MUKIM OF RANTAU PANJANG

Serial 20 Lot 793 Issued Document of Title: M.205 & S.I.

Present: Warith vide Form VIII

Affirmed, states in Malay deceased Registered Proprietor's cousin.

Che Teh bin Che Lah

The deceased Registered proprietor died 7 years ago.

Warith agree to possession by:-

Che Teh bin Che Wook [third defendant]

All present affirmed, state in Malay confirm.

Finding Section 8(i) Land Scheme Ordinance 51/55:-

Che Teh bin Che Wook [third defendant]

Order Group Settlement Order. Serial No. 29

R.O.W. Section 92 Land Enactment.

Initialled: A. Sani Hassan."

The evidence relating to it is as follows: Mohd. Nor bin Dahlan, the Chief Settlement Officer (PW3), said at page 21 of the appeal record —

"Inquiry regarding Lot 793 was held on 9.6.59 (see page 71 of the appeal record). According to Form VIII there were 4 wariths:-

1. Nik Mek bin Haji Nik Dir [1st defendant];
2. Che Teh bin Che Wook [third defendant];
3. Che Teh bin Che Lah;
4. Che Long bin Che Lah.

Nik Mek was not present and those present agreed to possession by Che Teh bin Che Wook [third defendant]. Notices of hearing were served on those 4 persons only. Finding was made under section 8(1) and Group Settlement Order *No. 29/59* was issued on same day — Lot 793 to be registered in name of Che Teh bin Che Wook [third defendant] under section 8(1). The note at page 4 shows that Che Teh bin Che Wook [third defendant] was in possession before the inquiry and the other wariths confirmed that."

The finding of the learned trial judge (at page 48 of the appeal record) was as follows:

"The note of evidence ... shows that Group Settlement Order No. 29/59 was made under section 8(1) giving possessory title to Che Teh bin Che Wook [third defendant] of Lot 793 and

(wrong though the District Officer might have been in relying only on the information given by those persons who were present at the hearing in finding that the said Che Teh bin Che Wook was in actual possession of the said lot) — it cannot in my view be said that he had not acted within the scope of the said section 8(1). The deceased died several years before the order was made and though all those present had claimed to be beneficiaries of the estate of the deceased, the possessory title given to the said Che Teh bin Che Wook was not based on the beneficial share she was entitled to in the said Lot 793 and I agree with the view expressed by PW3 that from the phrase 'Warith agree to possession by:- Che Teh bin Che Wook' it appears that the hearing officer had found that the said Che Teh bin Che Wook was in actual possession of the said Lot 793 before the inquiry was held and that this was confirmed by those wariths who were present."

As regards the other GSOs impugned in the first ground of appeal, the evidence is similar to the evidence given relating to the GSO 29/59, and the learned trial judge's finding (at page 48 of the appeal record) was as follows:

"The same could also be said in respect of orders appearing at pages 5, 7, 11 and 15. I therefore find that Group Settlement Orders No. 29/59 in respect of Lot 793 [page 71 of appeal record], No. 36/59 in respect of Lot 591 [page 72 of appeal record], No. 35/59 in respect of new Lots 2146 and 2147 (part of old Lot 353) and Lot 416 [page 74 of appeal record], No. 23/59 in respect of Lot 732 [page 78 of appeal record], and No. 31/59 in respect of Lot 590 [page 82 of appeal record] were not made without jurisdiction and therefore not null and void."

It is contended before us that the above GSOs were made without jurisdiction and therefore null and void.

With respect we agree.

Section 8(1) under which these orders were made envisages two distinct things. First, there must be a *finding* made by the District Officer that land is registered in the name of A and that B is in possession of it otherwise than holding under A. Possession here means possession in fact, as distinguished from possession in law, *Mamat* v. *Mahmood*.[1] Second, there must be an *order* made by the District Officer giving possessory title to B.

We have scrutinised the notes of evidence (at pages 71, 72, 74, 75 and 78 of the appeal record) of the enquiries relating to these GSOs and we regret we cannot find any reference in them to evidence that the persons in whose favour these orders were made were in actual possession of the lands at the time of the enquiry. This is in contrast to the notes of evidence (at page 80 of the appeal record) relating to GSO 29 where it is recorded that the witnesses said in the case of lot 772 "sold this land for $600 to:— Mariam binti Lembek who has been in possession for eight years. Haron bin Sulaiman ½ section 7. All present confirm." and the notes of evidence relating to GSO 38 in the case of lot 941 (at page 81 of the appeal record) "Sold this land for $400 to Che Mamat bin Abdullah who has been in possession for eight years. All present affirmed state in Malay. Confirm." In each of these cases there was evidence and the enquiry officer correctly found that these purchasers were in possession.

Nor was there evidence of possession before the learned trial judge.

Indeed it is clear from the notes of evidence made at the enquiries relating to these impugned orders that these orders were made by consent because in each case it is recorded that "Warith (beneficiaries) agree to possession by [the person or persons in whose favour each GSO was made].

With respect we agree with Mr. Wilson for the plaintiff/appellant that it is improper of the court to rely on the opinion of the Chief Settlement Officer (PW3) that the words "Warith agree to possession by . . . etc." showed that the person or persons concerned was or were in possession before the enquiries, which the other wariths confirmed. The Chief Settlement Officer did not himself conduct the enquiries and he merely stated his interpretation of the notes of evidence. In my view, the notes of evidence must be allowed to speak for themselves in the absence of the officer who actually conducted the enquiries.

However we do not mean to say that an enquiry officer must take notes of evidence as meticulously as a magistrate conducting a criminal trial, considering that the scheme of the legislation is to simplify procedure and reduce red tape in order to save time in updating the land registers in Settlement Areas.

Second Ground of Appeal

The second ground of appeal relates to GSO 31/59 in respect of lot 579. The notes of evidence relating to this order (at page 75 of the appeal record) read —

"NOTES OF ENQUIRY COPIED FROM LAND SCHEME NOTE BOOK NO. 9/59 PAGE 9 ON LOT NO. 579, MUKIM RANTAU PANJANG.

Serial 38 Lot 579 Issued Document of Title:-

Present: Warith vide Form VIII — 3 out of 4

Affirmed state in Malay deceased Registered Proprietor's cousin Che Teh bin Che Wok [third defendant]

The deceased Registered Proprietor died 7 years ago.

Warith agree to possession by: all wariths entitled to deceased's property vide Shariah Court Order dated 11.2.57 (238) in XXX.

All present affirmed state in Malay confirm.

Finding Section 8(i) Land Scheme Ordinance 51/55:-

Che Teh bin Che Wok [third defendant]	¼
Che Teh bin Che Lar	¼
Che Lor bin Che Lah	¼
Nik Mek bt. Hj. Nik Dir [first defendant]	¼

Order Group Settlement Order. Serial No. 31.

Initialled: T. Ismail"

The Chief Settlement Officer says in evidence at page 22 of the appeal record:

"Inquiry on Lot 579 was held on 8.6.59 [see page 75 of appeal record]. The plaintiff was not one of those called and he was not present. Again finding was made under section 8(1). GSO No. 31 was issued on same day. A distribution order was also made under section 13 of Small Estates (Distribution) Ordinance but it was not registered."

The learned trial judge's ruling on this (at page 48 of the appeal record) was as follows: —

"In connection with Group Settlement Order No. 31/59 in respect of Lot 579 recorded at page [75 of appeal record] the phrase 'Warith agree to possession by' also appears. The note of evidence also shows that possessory titles of the said Lot 579 were given to each of the 4 claimants (beneficiaries) in equal ¼ share each on the ground that they were so entitled to it, vide Shariah Court Order dated 11.2.57. Those 4 persons therefore were in possession of the said lot not otherwise than but holding under the deceased proprietor, and as such an order should have been made by the District

Officer not under the said section 8(1) but under section 7 of the said Ordinance. As the error in law made by the District Officer was to the disadvantage of those 4 persons who should have got complete instead of mere possessory titles I consider it inequitable to declare the said order null and void."

With respect we agree with the plaintiff's argument before us that the learned trial judge should have declared this GSO also null and void, because the enquiry officer purported to make it under section 8(1) and there is no reference whatsoever in the notes of evidence taken by him that the persons in whose favour the order was made were in possession and that on the contrary the phrase "Warith agree to possession by . . . etc." suggests that the order was made by consent of the alleged warith.

If the enquiry officer had no jurisdiction to make the order under section 8(1), equally he has no jurisdiction to make it under section 7 either, because under the latter section also it is necessary that the person whose interest is to be registered by virtue of the order should be in possession.

By the time of the trial the quarter share in Lot 579 which had been given to Che Teh bin Che Lah by the enquiry officer had been sold by him for $656.20 to a *bona fide* purchaser, Che Selamat binti Che Teh. Accordingly we would order that as regards this quarter share the third defendant do pay the plaintiff $656.20 damages, and that the other ¾ share be registered in the name of the plaintiff.

Third Ground of Appeal

The third ground of appeal relates to Lot 606 of which the deceased owned a half share. The learned judge found that by the time of the trial the whole of this half share had been transferred by Nik Mek, the first defendant. In evidence the first defendant said that she sold it in 1966 for $2,500. Now a licensed appraiser (PW4) said in evidence that at the request of the plaintiff's solicitors he on 9th July, 1970, valued this half share at $9,837.75. However the learned judge accepted the sale price of $2,500 as the basis for awarding damages and accordingly ordered the first defendant to pay the plaintiff that amount. Before us it is argued on behalf of the plaintiff that the trial judge was wrong and should have awarded the plaintiff $9,837.75 damages in respect of this lot.

With respect we do not think there is any merit in this ground, as damages are to be measured by reference to the position of the plaintiff at the date when the damage or loss was suffered and this is normally the date of the commission of the wrong complained of.

In the result this appeal is allowed to the extent set out above, and with costs. Deposit to be returned to appellant.

Order accordingly.

Solicitors: *Wilson & Co.*

MAHIMA SINGH & ORS. v. BULDEV SINGH

[F.C. (Ali, Ong Hock Sim and Raja Azlan Shah F.JJ.) January 4, 1975]

[Kuala Lumpur — Federal Court Civil Appeal No. 80 of 1974]

Companies — Private company — Issue of shares — Whether issue of shares contrary to articles.

The Seremban Town Service Sendirian Bhd. had resolved at its annual general meeting to allot shares to bumiputras. The directors of the company subsequently decided to issue shares to Malay employees. No offer or notice was given to the respondent and other shareholders in accordance with article 46 of the Articles of Association of the company. The respondent applied for a declaration that the acts of the appellants, the directors of the company, in issuing the shares was *ultra vires* the Articles of Association of the company. The learned trial judge allowed the application, as he held that the act of the appellants in alloting the shares was contrary to the resolution passed at the Annual General Meeting (see [1974] 2 M.L.J. 206). The appellants appealed.

Held, dismissing the appeal: the acts of the appellants were *ultra vires* the articles of association as the appellants had failed to offer the shares or give notice to the respondent and other shareholders as required by the articles of association of the company.

Cases referred to:-

(1) *Park* v. *Royalties Syndicate Limited* [1912] 1 K.B. 330 at p. 342.

(2) *Rattan Singh and others* v. *Managing Director of Moga Transport Company* A.I.R. 1959 Punjab 196.

FEDERAL COURT.

A. K. J. D'Cruz for the appellants.

Dulip Singh for the respondent.

Ong Hock Sim F.J.: The appellants are three of four directors of the Seremban Town Service Sendirian Berhad (hereinafter called "the company") and were sued in their capacities as such, as the second, third and fourth defendants by the respondent, a shareholder of the company, in Civil Action No. 449 of 1973, in the High Court at Kuala Lumpur. Action was discontinued at the commencement of the hearing against the first defendant, the company's managing director and father of the respondent.

The proceedings were instituted as a result of a decision of the Board of Directors at a meeting on April 7, 1973 to allot to nine named Bumiputra workers of the company 31,500 unissued shares at par which would thereby increase the paid-up capital to $136,500 of the authorised capital of $250,000. The basis of the action is set out in paragraphs 6 and 7 of the Statement of Claim as follows:

"6. The defendants have recently resolved to grant and/or issue the un-issued new shares of the said company to members of the public which said shares have not or at all been first offered to the plaintiff and the existing share-holders of the company in accordance with the aforesaid Articles of Association of the said company."

(These Articles were Articles 6 to 9, 25 to 40 and 46 — *vide* paragraph 5 of the Statement of Claim.)

"7. The defendants' resolution to grant and/or issue such unissued new shares to members of the public are void and unlawful and *ultra vires* the Articles of Association of the said company as the said Articles expressly prohibit such issues to any members of the public."